



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing and all parties gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The landlord indicated at the commencement of the hearing that all evidence has been exchanged, which was not disputed by the tenants. Therefore, all evidence has been reviewed and the evidence I find relevant to the application is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property dated February 28, 2023 was given in accordance with the *Residential Tenancy Act* and in good faith?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on October 1, 2020 and reverted to a month-to-month tenancy after August 31, 2021 and the tenants still reside

in the rental unit. Rent in the amount of \$1,600.00 was payable on the 1<sup>st</sup> day of each month, which was increased to \$1,624.00 and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the landlord is a tenant of the owner of the rental property and lives in the upper unit. The tenants reside in the lower suite, and the landlord also rents a studio suite within the building for \$1,200.00 per month.

On February 28, 2023 the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property by personally handing it to one of the tenants. A copy has been provided by the tenants, and it is dated February 28, 2023 and contains an effective date of vacancy of April 30, 2023. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse.

The landlord cannot afford a 3 bedroom place anymore, and would have to move out altogether or move into one of the smaller suites. The landlord has offered the tenants the upper suite, but the tenants declined. The landlord pays \$4,100.00 for the entire house.

**The first tenant** (NM) testified that the landlord moved into the rental home a month before the tenants did. On February 20, 2021, due to work required on a faucet in the rental unit, the tenants were informed that the landlord is not the owner. The tenants communicated with the owner, who said he was not aware of the Notice.

On February 28, 2023 the tenant reached out to the Residential Tenancy Branch and learned that in accordance with Section 49(1), the landlord must be an owner, not an agent, to be qualified to end the tenancy for the landlord's use of the property.

The tenant also testified that after learning what amount the landlord wanted for the upper unit, the tenant started looking for places and to determine what a 3 bedroom rental amount would be, and found an advertisement that the tenant believes was for the upper unit; it had the same descriptors as when the tenants applied to rent the unit. If there is a comparable property, that could suggest that the landlord is not acting in good faith, and there is a vacant unit in the rental house.

**The second tenant** (RH) testified that the first time the tenant felt deceived was on February 23, 2023 when the landlord texted the tenant wanting to take measurements. Then the landlord said he can no longer afford to live in the 3 bedroom unit in the upper level. The landlord said that one option would be to evict the tenants, making light of it, but said that may be the worse case scenario unless the landlord could find another place, and to not lose sleep over it. The landlord also said that he was looking for another apartment, or considering renting a 5<sup>th</sup> wheel to live in during the spring, summer and fall. However, only 5 days later, the landlord texted the tenant on February 28, 2023 asking to have a conversation, and the parties agreed to a time. The landlord blind-sided the tenant by giving the Notice to end the tenancy. The landlord's intention is to remove the tenants without spending more than 5 days to check out other options.

The landlord offered the tenants the upper suite for \$3,850.00 since they are good tenants, but that is well over double than the amount the tenants pay, and explained to the landlord that the tenants could not afford that.

#### SUBMISSIONS OF THE LANDLORD:

The landlord did place an advertisement to rent the upper level after serving the Notice to end the tenancy, assuming that on May 1 the landlord would take possession of the lower suite. Once the tenants filed this dispute, the landlord took the advertisement down.

The landlord is not acting as an agent on behalf of the owner, but is actually the landlord of the lower suite and the owner is the landlord's landlord. The landlord also refers to Residential Tenancy Policy Guideline 27. If Person A is renting a residential property with more than one rental unit (like a house with an upper suite and a lower suite) and Person A rents out the lower suite to Person B, the director may have jurisdiction. Person A may meet the definition of a landlord under the *Residential Tenancy Act* because they are not occupying the rental unit Person B resides in but they are entitled to possession of that rental unit and are exercising the rights of a landlord in relation to it.

In this case, they are self-contained suites. The landlord did not intend to deceive the tenants, and was also specific that the landlord had not made any decisions at that point, but it may be months before a decision would be made. The landlord also told the tenants that he would keep looking for a place, and still is. There is no bad faith.

The market value is assessed at \$3,850.00, but not what it was offered; it was for partially furnished and the listing was lower and completely unfurnished for \$3,700.00.

#### SUBMISSIONS OF THE TENANTS:

The asking price when the landlord made the option for renting the upper level was \$3,850.00, and the tenants do not recall it being furnished; the tenants have their own furniture.

The tenancy agreement signed does not state anything about subletting except that the tenants cannot sublet. The tenants didn't know that the landlord was not the owner when the rental unit was first rented.

#### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a Two Month Notice for Landlord's Use of Property, the landlord must demonstrate good faith intent, with no ulterior motive.

I have reviewed the Notice provided by the tenants and I find that it is in the approved form and contains information required by the *Act*.

A landlord, as set out in the definition section, includes a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit and exercises any of the rights of a landlord under a tenancy agreement or the *Act* in relation to the rental unit.

I also refer to Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, which states, in part, "If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith."

In this case, the landlord rents the entire building for \$4,100.00 per month, which consists of the rental unit, the upper level where the landlord currently resides, and a studio suite that the landlord rents for \$1,200.00 pr month. The rental unit that is the subject of this dispute rents for \$1,624.00 per month, for a total of \$2,824.00 per month income, a difference of \$1,276.00 per month from the total amount the landlord pays to the owner.

The landlord testified that he could no longer afford to remain in the upper level and pay the rent, and intends to re-rent the upper level and move into the rental unit that is the subject of this dispute. The landlord testified that he took measurements of the rental unit to ensure that his furniture would fit, and advertised the upper unit where the

landlord currently resides at \$3,700.00 per month, but offered it to the tenants at \$3,850.00.

The tenant testified that another unit is vacant, and the landlord did not dispute that.

The landlord has not provided a copy of the tenancy agreement with the owner. The Policy Guideline regarding subletting also provides that where a tenant sublets a rental unit to a sub-tenant, the sub-lease must be for a shorter period than the tenancy agreement with the owner. There are consequences for a landlord who does not use a rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property for at least 6 months. Without knowing whether the landlord has a fixed term or a month-to-month tenancy with the owner, or any other pertinent information such as whether or not the landlord is in arrears of rent to the owner, it is possible that the landlord will not be able to accomplish the stated purpose for at least 6 months.

Given that, and the fact that the landlord did not indicate that the studio suite which is vacant would not be suitable for the landlord, I am not satisfied that the landlord has established good faith intent. Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

Since the tenants have been successful with the application, the tenants are entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants as against the landlord in that amount, and I order that the tenants may reduce rent for a future month by that amount, or may serve the order upon the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated February 28, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 25, 2023

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Residential Tenancy Branch